REMARKS

The Non-Final Office Action dated April 28, 2010 has been received and reviewed. Prior to the present communication, claims 1-7, 26-29, 46, and 51-57 were pending. Each of claims 1, 26, and 46 has been amended herein. Thus, claims 1-7, 26-29, 46, and 51-57 remain pending. Support for the amendments may be found in the specification, at least, at FIGS. 4 and 9. Care has been exercised to introduce no new matter. Applicants respectfully request reconsideration of the present Application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 103

A. Applicable Authority

Title 35 U.S.C. § 103(a) declares that a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." In *Graham v. John Deere,* the Supreme Court counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966).

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP § 2141.02(I) (Fed. Cir. 1983)). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ

494, 496 (C.C.P.A. 1970)). Moreover, if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. MPEP § 2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

"The examiner bears the initial burden of factually supporting a *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness . . . . To reach a proper determination of obviousness, the examiner must step backward in time and into the shoes worn by the hypothetical ' person of ordinary skill in the art' when the invention was unknown and just before it was made. In view of all factual information, the examiner must then determine whether the claimed invention 'as a whole' would have been obvious at that time to that person. *Id* (emphasis added). Knowledge of applicant's disclosure must be put aside in reaching this determination . . . . [I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." MPEP § 2142.

"The key to supporting any rejection under 35 U.S.C. 103 is the **clear articulation of the reason(s)** why the claimed invention would have been obvious." MPEP § 2142 citing *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (U.S. 2007) (emphasis added), which notes that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. Moreover, the Federal Circuit has stated that "'rejections on obviousness **cannot be sustained with mere conclusory statements**; instead, there must be some **articulated reasoning** with some rational underpinning to support the legal conclusion of obviousness.'" MPEP § 2142 (emphasis added) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). See also *KSR*, 127 S. Ct. at 1741 (quoting Federal Circuit statement with approval).

B. Rejection of claims 1-7, 26-29, 46, and 51-57

Claims 1-7, 26-29, 46, and 51-57 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,985,870 to Martucci, et al. (hereinafter "Martucci") in view of "Tools for Immunization Guideline Knowledge Maintenance" by Miller (hereinafter "Miller"). Applicants submit that the cited references, either alone or in combination, fail to teach or suggest every feature of the independent claims, as amended herein. Applicants respectfully traverse this rejection.

Independent claim 1, as amended herein, is directed to preventing one or more immunizations from being administered to a person too early. The claim recites, in part, generating, utilizing a third computer process, a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization identified from the input by the clinician to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; and updating the custom immunization schedule for the person in response to receiving an input regarding the immunization to be administered during the present clinical visit.

In contrast, Martucci is directed to a medication delivery system including a medical container holding a prescribed medication to be delivered to a patient. *See e.g.*, Martucci, Abstract. The medication delivery system is intended to ensure delivery of "the right dose to the right patient with the right drug at the right time and by the right route." *Id.* at col. 2, ll. 60-65.

With respect to independent claim 1, Martucci fails to teach or suggest generating, utilizing a third computer process, a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person

during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations. *See Non-Final Office Action dated 04/28/2010*, Pg. 3-4. As such, Applicants respectfully submit that Martucci also fails to teach or suggest generating, utilizing a third computer process, a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization identified from the input by the clinician to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations.

Martucci further fails to teach or suggest updating the custom immunization schedule for the person in response to receiving an input regarding the immunization to be administered during the present clinical visit. Initially, Applicants respectfully submit, and the Examiner has stated, that Martucci fails to teach or suggest an immunization schedule. *Id.* at Pg. 3. As such, Applicants respectfully submit that Martucci cannot teach or suggest updating a custom immunization schedule when an immunization schedule itself is not taught or suggested.

Miller fails to overcome the deficiencies of Martucci. Miller is directed to a rule-based program that performs childhood immunization forecasting. *See generally*, Miller. Miller describes generating patient specific recommendations utilizing standard recommendations and a child's immunization history. *Id.* at Pgs. 173 and 175. Using the child's history and standard recommendations, a forecast is generated. *Id.* at Pg. 176.

With respect to independent claim 1, Miller fails to teach or suggest generating, utilizing a third computer process, a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person

during at least one former clinical visit prior to the present clinical visit, *the immunization identified from the input by the clinician to be administered to the person during the present clinical visit*, and a standard schedule of recommended immunizations. Rather, Miller simply generates a forecast of potential immunizations in a child's future based on the child's immunization history and standard immunization recommendations. At no point is an immunization to be administered during a clinical visit that was input by a clinician used to generate a custom immunization schedule for a person, as recited in independent claim 1.

Miller also fails to teach or suggest updating the custom immunization schedule for the person in response to receiving an input regarding the immunization to be administered during the present clinical visit. Miller simply generates a forecast including doses that are due and future doses to schedule to follow the current dose which is due now. *Id.* at Pg. 173. Miller does not, at any point, teach or suggest receiving input regarding the immunization to be administered during the present clinical visit, which results in the custom immunization schedule being updated.

In view of the above, it is respectfully submitted that Martucci fails to teach or suggest all of the features of independent claim 1 and the addition of Miller fails to overcome the deficiencies of Martucci. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of independent claim 1 is respectfully requested for at least the above-cited reasons. As claims 2-7 depend, either directly or indirectly, from claim 1, withdrawal of the § 103(a) rejection of these claims is requested as well. *See In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (a dependent claim is obvious only if the independent claim from which it depends is obvious); *see also*, MPEP § 2143.03.

Independent claim 26 is directed to a computer system for preventing one or more immunizations from being administered to a person too early. The claim recites, in part, a determining module for determining whether it is too soon to administer the immunization in response to receiving the identification of the immunization to be administered from the clinician during the present clinical visit, wherein determining whether it is too soon to administer the immunization includes accessing a custom immunization schedule for the person that was generated based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization identified from the input by the clinician to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; and an updating module for updating the custom immunization schedule for the person in response to receiving an input regarding the immunization to be administered during the present clinical visit.

Independent claim 46 is directed to preventing one or more immunizations from being administered to a person too early. The claim recites, in part, generating a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization identified from the input by the clinician to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; and updating the custom immunization schedule for the person in response to receiving an input regarding the immunization to be administered during the present clinical visit.

Independent claims 1, 26, and 46 recite generally similar claim limitations. Therefore, the above arguments regarding independent claim 1 apply with equal force to

independent claims 26 and 46. As such, Applicants respectfully request withdrawal of the rejection of claims 26 and 46. Claims 27-29 and 51-57 depend, either directly or indirectly, from independent claims 26 and 46. As such, Applicants request withdrawal of the rejection of claims 27-29 and 51-57 as well. *See In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (a dependent claim is obvious only if the independent claim from which it depends is obvious); *see also*, MPEP § 2143.03.

CONCLUSION

For at least the reasons stated above, claims 1-7, 26-29, 46, and 51-57 are believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or asturgeon@shb.com (such communication via email is herein expressly granted) – to resolve the same.

Submitted herewith is a Request for a Two-Month Extension of Time, along with the appropriate fee. It is believed that no additional fee is due. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.107715.

Respectfully submitted,

/ASHLEY N. STURGEON/

Ashley N. Sturgeon
Reg. No. 64,819

ANLZ/jc
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550